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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/935,393

08/23/2001

William Kress Bodin

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9825

45993 7590 04/18/2007

IBM CORPORATION (RHF)

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EXAMINER

CASLER, TRACI

ART UNIT

PAPER NUMBER

3629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/935,393	BODIN, WILLIAM KRESS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Traci L. Casler	3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This action is in response to papers filed on January 27, 2007.
2. Claims 1, 11 and 21 have been amended.
3. Claims 1-30 are pending.
4. Claims 1-30 are rejected.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 10-15, 20-25 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Publication 20010028301 Geiger et al. Electronic Shopping Cart Display System. Hereinafter referred to as Geiger.

6. As to claims 1, 11 and 21 Geiger teaches:

Identifying a consumer **when the shopper pushing the cart most into a transceiver location** the consumer identification unit is mounted on the cart which is "near" the display. (Pg.4 Pg. 48-49 Pg. 6 ¶ 73).

Retrieving preferences of consumer(Pg. 6 ¶ 73 Pg 8 105).

Matching products with preferences(Pg. 1 ¶ 9; Pg. 5 ¶ 58).

**Activating a display unit “near” a retail fixture, the display unit directs the users attention to the location(Pg. 1 ¶9 Pg. 7 ¶ 92). \*\*\*the transceivers also function to flash lights to direct consumer attention).**

7. As to claims 2, 12 and 22 Geiger teaches the identifying with a magnetic strip card.(Pg. 6 ¶ 73).
8. As to claims 3, 13 and 23 Geiger teaches accessing a database.(Pg 8 ¶95)
9. As to claims 4, 14 and 24 Geiger teaches matching price(Pg. 5 ¶58).
10. As to claims 5, 15 and 25 Geiger teaches indicator as light, text etc(Pg. 1 ¶ 9).
11. As to claims 10, 20 and 20 Geiger teaches the database maintaining inventory information.(Pg. 4 ¶ 48 & Pg. 8 ¶ 99).

***Claim Rejections - 35 USC § 103***

12. Claims 6-9, 16-19 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over. US Patent Publication 20010028301 Geiger et al. Electronic Shopping Cart Display System. Hereinafter referred to as Geiger.
13. As to claims 6-9, 16-19 and 26-29 Geiger teaches an intelligent merchandise indicator in which the system is further used as an advertising/promotion system for direct marketing to consumers. However, Geiger fails to teach sending product reference information to consumer via email message. It would have been obvious to combine Geiger's direct marketing system with an email system for emailing the information to the consumers as online advertising is a commonly used form of direct marketing campaigns

***Response to Arguments***

14. Applicant's arguments filed January 31, 2007 have been fully considered but they are not persuasive.

15. Applicant argues that Geiger is directed towards only stores or showrooms in which shopping carts are used.

16. In response to applicant's argument that Geiger is directed towards only stores or showrooms in which shopping carts are used, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicants claims do not preclude the display being mounted on a shopping cart which is "near" a retail display. Furthermore, as indicated in Pg. 1 ¶ 9 Geiger discloses that the transceivers can function as red flashing red light to direct the users attention...may be positioned within a particular store as desired(near a display).

17. Applicant arguments that the instant applicant is claiming "static" consumer identification unit and alerting mechanism. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., statically positioned) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Applicants claims do not preclude the

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display and alert mechanism from being "mounted" on a shopping cart. The shopping cart is in the store, it is therefore near the retail display. Additionally the transceivers have previously been identified to flash alerts to the consumer. The transceivers are mounted through out the store which again are near the display.

18. As to applicants arguments that it would not be obvious to modify Geiger, if in fact it truly did fail to teach the "static" display, as it would change the principle of operation of Geiger's invention. Applicant is making arguments towards a 103 rejection when the limitations being argued are part of the independent claims which were giving a anticipation rejection, not an obviousness rejection.

19. Applicant argues that Geiger identifies the consumer once "within the retail space using consumer identification units(Pg. 12 ¶ 4 of response dated January 31, 2007).

Where as applicants invention identifies the consumer as they approach a retail display fixture. The applicant fails to draw a distinction between the prior art and the instant application. If a consumer is within a retail store would the consumer be approaching retail displays? The applicants limitation of being on OR near leave the claims open to broad interpretation. Even if applicant were to remove the alternative limitation Geiger still reads on the limitations. Geiger teaches transceivers are statically mounted on retail displays and flash alerts. The structure of applicants application does not create a different outcome. Applicant argues that the instant application could have consumer identification units located near physical points of access, doors, gates. How does this different from a cart in the store with the consumer identification. The physical points are "near" the display just as the shopping carts.

20. As to applicants arguments that the consumer identification units are "co-located" with displays and with the products and that Geiger is silent to "co-location." The examiner notes applicant is silent as well to "co-location". Applicant has a display on or NEAR a retail fixture and applicant has an consumer identification unit on OR near the retail fixture. As claimed, applicant only has one consumer identification unit per retail fixture.

***Conclusion***

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

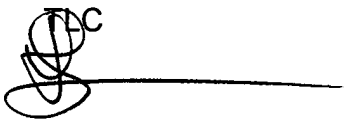
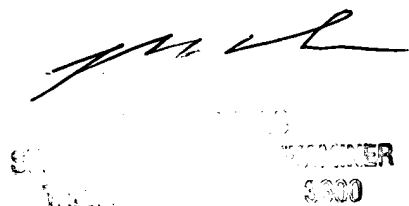
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Handwritten signature and initials, possibly "JWC", with a horizontal line extending to the right.Handwritten signature and a rectangular stamp. The stamp contains the text "EXAMINER" and "3629".